

APPROVED: February 13, 1989

ATTEST: *Ante M. Conls*

MAYOR AND COUNCIL  
ROCKVILLE, MARYLAND  
Meeting 41-88

November 14, 1988

The Mayor and Council of Rockville, Maryland, convened in General Session in the Council Chamber, Rockville City Hall, Rockville, Maryland, on Monday, November 14, 1988 at 7:30 p.m.

PRESENT

Mayor Douglas M. Duncan

Councilmember Stephen N. Abrams

Councilmember James F. Coyle

Councilmember Viola D. Hovsepien

Councilmember David Robbins

The Mayor in the Chair.

In attendance: City Manager Bruce Romer, City Attorney Paul Glasgow, City Clerk Margaret R. Gearin.

Re: City Manager's Report

City Manager Bruce Romer reported the following:

1. The budget process for FY 90 will begin this week. In mid-January, a meeting will be scheduled before the budget recommendations are finalized and will reflect the goals of the Mayor and Council.
2. The Art in Public Places program will hold dedications of outdoor art this week at Monument Park and the Montrose Civic Center.
3. The Mayor and Council is having a coffee on Thursday morning with the employees at the Public Works facility on Gude Drive.
4. The city-wide space study program is underway, and the consultant will meet with department heads and staff to discuss space needs.
5. A public hearing on the Rockville Pike will be held on December 12th.

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6. The Town Center Roundtable will meet on Friday morning at 7:30 a.m. at the Town Center Inn on N. Washington Street.

Re: Proclamation--Approval of  
Proclamation for 50th Anniversary  
of the Night of Pogroms.

Proclamation No. 20-88

There being no objection from the Council, Mayor Duncan proceeded to issue Proclamation No. 20-88, the full text of which can be found in Proclamation File No. 3 of the Mayor and Council, proclaiming the 50th Anniversary of the Night of the Pogroms.

This proclamation was issued to remember the night of November 9-10, 1938, the night when the Nazi persecution of Jewish citizens escalated, leading to the Holocaust. Alyce Rothchild of the Montgomery County Human Relations Commission accepted the proclamation.

Re: Proclamation--Rockville Bible Week,  
November 20-27, 1988.

Proclamation No. 21-88

There being no objection from the Council, Mayor Duncan proceeded to issue Proclamation No. 21-88, the full text of which can be found in the Proclamation File No. 3 of the Mayor and Council, proclaiming Rockville Bible Week, November 20-27, 1988. This proclamation, in recognition of National Bible Week, encourages the study of the Bible as a source of inspiration and human values. Mr. Ronald Knoll of the Rockville Kiwanis Club accepted the proclamation.

Re: Recognition--Mr. Bill Lumpkin and  
Dr. Dana Beane.

There being no objection from the Council, Mayor Duncan recognized Mr. Bill Lumpkin and Dr. Dana Beane for their quick action in reviving a heart attack victim at the Rockville Senior Center. Mr. Lumpkin and Dr. Beane used CPR to revive Mr.

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Howard Derflinger after he suffered a heart attack on October 2, 1988.

Re: Approval of Minutes

On motion of Councilmember Coyle, duly seconded and unanimously passed, the Minutes of Meeting #30-88 (July 11, 1988) and Meeting #31-88 (July 18, 1988), were approved as written.

Re: Citizens' Forum

The Mayor opened the meeting to those citizens who wished to address the Mayor and Council.

1. Ralph DeLisa, President of the Rockville Chamber of Commerce, spoke in opposition to the City spending \$1.3 million for improvements to West Montgomery Avenue without an appropriate assessment to property owners and stated that the Chamber did not object to some improvement on West Montgomery Avenue but that other City matters carry a higher priority, for example, affordable housing, new transportation and new life at the town center.

2. Leah Barnett, 19 Orchard Way North, read a letter from senior citizen Estelle Braberian opposing brick sidewalks for West Montgomery Avenue because they are difficult to walk on.

Ms. Barnett also read a letter from East Rockville Citizens with thirty-five signatures opposing the expenditure of \$1.3 million for undergrounding wires on West Montgomery Avenue.

Ms. Barnett submitted a letter from Charles Rand, 207 Baltimore Road, opposing the undergrounding of utilities on West Montgomery Avenue.

Ms. Barnett submitted a petition with 172 signatures opposing the undergrounding of utilities on West Montgomery Avenue.

3. Alice Kelly, 401 West Montgomery Avenue, stated that improvements to West Montgomery Avenue will enhance the entire city including the business district

and thanked the Mayor and Council for their vision of the future.

4. Walt Davis, 6 Monument Court, speaking on behalf of the West End Citizens Association, supported the improvements to West Montgomery Avenue and called them long overdue, logical and fair.

5. Mike Patterson, 500 Meadow Hall Drive, Chairman of the Historic District Commission, stated that the Commission began studying the West Montgomery Avenue area in October 1980 and many of their proposals became part of the Master Plan which included brick sidewalks and total undergrounding of wires.

6. Arnold Barnett, 19 Orchard Way North, asked the Council why they had not thought of undergrounding wires on Falls Road while it was being developed and suggested that there should be a cost benefit study on the usefulness of expending money on West Montgomery Avenue to determine its benefit to business. Councilmember Coyle answered that the Master Plan had considered that question and concluded that the improvements were esthetic and would encourage further development in the town center.

7. Richard Hottel, 4128 Great Oak Drive, accompanied by his son, stated that he was a Rockville resident and businessman for twenty five years and reluctantly came to Citizens' Forum to protest the preliminary decision of the City to rebid a contract which should have been made to his company, the successful low bidder, on a recent contract. Mayor Duncan asked Mr. Hottel to remain and the issue would be discussed under New Business.

8. John Tyner, President of Twinbrook Citizens Association, 5911 Halpine Road, stated that TCA has no position on West Montgomery Avenue but that fourteen members of the Executive Board like the improvements but believe that the issue of equity for the good of the City must be addressed.

9. Jim Avencena, 1991 Lancashire Drive, representing the Potomac Woods

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Executive Committee opposed the expenditure of \$1.3 million for undergrounding wires on West Montgomery Avenue and not assessing the neighbors. Councilmember Coyle asserted that the paramount issue for him was that these improvements are part of the town center development.

10. James Vitol, 11 Wall Street, represented the West End Historic District which is a partnership between the City and its homeowners and stated that these homeowners have agreed to maintain their homes within certain guidelines. Also, Historic Walking Tours are conducted in this neighborhood making it a resource for the entire city.

Re: Introduction of Ordinance to grant  
Map Amendment Application M-50-87,  
Mayor and Council of Rockville  
applicant.

Councilmember Hovsepien stated that she wished to change her position on this application and now favored maintaining 25 feet in the R-60 Zone and approving 25 feet to be rezoned C-2.

On motion of Councilmember Coyle, there was introduced an ordinance to grant Map Amendment Application M-50-87, Mayor and Council of Rockville applicant. This ordinance is designed to provide zoning reclassification of a 50 foot wide strip of land along the western edge of the Twinbrook Shopping Center from the R-60, One-Family Detached Residential Zone, to the C-2, General Commercial Zone. Said ordinance to lay over for at least one week before final adoption.

Re: Introduction of Ordinance to grant  
Text Amendment Application T-85-  
87, Mayor and Council of Rockville  
applicant.

The City Manager noted that this ordinance should be amended to read "one parking space for every two employees" and should be introduced as amended.

On motion of Councilmember Hovsepien, an ordinance to grant text amendment

Application T-85-87 was introduced as amended to amend parking quantity requirements of the Zoning Ordinance so as to establish a separate parking requirement for supermarkets containing at least 35,000 square feet of space. This new requirement will be for one parking space per 200 square feet of floor area used for retail sales, trade, or merchandising; and one parking space for every two employees. Said ordinance to lay over at least one week before final adoption.

Re: Introduction of Ordinance to amend  
Section 3-1.10, "Leave" of Chapter  
3 entitled "Personnel Regulations"  
of the "Laws of Rockville".

Upon motion of Councilmember Coyle, an ordinance was introduced to amend Section 3-1.10, "Leave" of Chapter 3 entitled "Personnel Regulations" of the "Laws of Rockville" so as to delete the requirements that family sick leave be taken only for specified family members residing in the employee's household; and to expand the definition of "immediate family" for which death leave may be granted. This amended ordinance will allow all eligible employees to: (1) now utilize their sick leave for the illness of family members not residing in the same household; and (2) include in-laws in the definition of immediate family under death leave which provides three days off with pay. Said ordinance will lay over for at least one week before final adoption.

Re: Authorization of Release of Sanitary  
Sewer Easement at 421 Ritchie  
Parkway.

A request has been made by an attorney representing Alan D. Black and Kimberly Black, who reside at 421 Ritchie Parkway, that the City release that portion of a sanitary sewer easement that crosses the Blacks' property. The Public Works Department has reviewed the request and reports that the City no longer uses the easement across the Blacks' property for a sanitary sewer and has no objection to the release of the

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easement. Similarly, the Legal Department has no objection to the release. Upon motion of Councilmember Coyle, duly seconded and unanimously passed the Mayor and Council authorized release of sanitary sewer easement at 421 Ritchie Parkway was approved.

Re: Adoption of Resolution to establish a fee of \$40,000 per acre for quantity control and \$6,000 per acre for quality control for waivers of on-site storm water management.

Resolution No. 23-88

This action increases the SWM contribution rate from \$20,000 per impervious acre created to recover actual costs to the City. The City provides effective SWM control through large regional facilities and also permits developers to request a waiver of SWM requirements for providing on-site facilities and instead contribute money for the City to develop regional facilities. Under the recent "Save the Bay" initiative, improved water quality is required which adds to the engineering and construction costs of SWM facilities. To cover the current costs of construction and maintenance of regional SWM facilities, a contribution rate of \$46,000 per impervious acre would be required: \$40,000 would be for "quantity" control and \$6,000 would be for "quality" control at the City's regional facilities.

Staff recommends approval since (1) it is an environmentally beneficial program to eliminate pollution, (2) the City must implement SWM requirements imposed by the State, (3) the increase is necessary if the City is to continue with the self-supporting SWM program and (4) any developer of any property of any size has the option of providing an on-site system and avoiding the fee.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, Resolution No. 23-88, the full text of which can be found in Resolution Book No. 9 of the Mayor and Council, adopting a fee of \$40,000 per acre for quantity control and

\$6,000 per acre for quality control for waivers of on-site storm water management was adopted by the Mayor and Council.

Re: Approval of agreement authorizing payment through the Montgomery County leaf disposal program in the amount of \$2.91 per cubic yard to Maryland Environmental Service (MES), the agent for Montgomery County, for receiving and processing leaves from the City of Rockville.

This action ratifies the City Manager's emergency action authorizing the disposal of leaves through Montgomery County. Staff recommends that approval be given to contract with Maryland Environmental Service in the amount of \$2.91 per cubic year, for the disposal of leaves. Total projected FY 89 costs are not expected to exceed \$60,000. The Budget Office has confirmed that funds exist from cost savings during the year to accommodate this additional expense. Councilmember Hovsepian asked if some leaves could be saved for mulch for citizen use. The City Manager assured the Council this would be done.

Upon motion of Councilmember Hovsepian, duly seconded and unanimously passed, the Mayor and Council voted to approve the agreement authorizing payment through the Montgomery County leaf disposal program to Maryland Environmental Service.

Re: Approval of Increase in the funding authorization for construction of driveway aprons by \$23,000 to be recovered by special assessments levied against the improved property.

For over thirty years, Rockville has constructed driveway aprons at the request of individual property owners using the services of the annual concrete maintenance contractor. By special assessment, the full cost is levied against the improved property. Since requests for driveway construction in FY89 already equals the amount of money provided for this work during the entire fiscal year, this action



increase, from \$30,000 to \$53,000, will provide for anticipated additional driveway apron requests for completion during Spring of 1989.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, the Mayor and Council voted to increase funding authorization for construction of driveway aprons by \$23,000.

Re: Adoption of Ordinance to authorize public improvements for construction of sidewalks, road improvements and street lights on West Montgomery Avenue from 300 feet west of Washington Street to Nelson Street - Project No. 7Q11.

Ordinance No. 35-88

This action will improve Montgomery Avenue between Washington Street and Nelson Street by installing new sidewalks (in part with brick), installing decorative street lights on wooden poles on the south side of the street, and undergrounding all wiring except the highest electric wires. There will be no special assessments against adjacent property owners.

City Manager Bruce Romer presented a history of the study that has occurred in developing the public improvements recommended for West Montgomery Avenue including the Town Center Urban Renewal Plan II regarding West Montgomery Avenue as a gateway to the Town Center and a Town Center undergrounding of utilities program. In addition, the Master Plan and its 1982 amendment discussed the West Montgomery Avenue project with recommendations for undergrounding which was adopted on December 6, 1982 by ordinance. Next, he reviewed the financial elements of adding \$1.3 million to expenditures and concluded with Finance Director Kevin Deckard that the project is doable without creating debt issuance stress or the need to raise taxes.

Councilmember Abrams commented that whether the project increases taxes or not, it limits other choices and moved that the decision be deferred to allow

businessmen and developers to comment on whether the project would enhance the Town Center. Councilmember Robbins seconded the motion for purposes of discussion. After a brief discussion, the substitute amendment failed 1/4 with Councilmember Abrams voting in the affirmative. Councilmember Coyle explained his vote stating the West Montgomery Avenue is a major gateway to the City and work on it should commence now. It is a project that is integral to the Town Center Plan. It supports the recommendations of the neighborhood, will benefit the entire community and over time will pay for itself.

Councilmember Hovsepien agreed that it was time to move forward because the current condition of West Montgomery Avenue detracts from Rockville as an Historic District. Since the City asks owners in this Historic District to contribute, she favors the City contributing.

Councilmember Abrams noted that Jim Vitol has mentioned the Historic District was a public/private partnership but with this project, we are asking the City to contribute all.

Councilmember Robbins noted that he was impressed by arguments on both sides in Citizens' Forum and that it was a legitimate area in which to disagree. However, for him, it was not a matter of cost benefit but a matter of vision for the public interest today, tomorrow and for the 20th Century. Rockville has a sense of identity which includes West Montgomery Avenue as a gateway to the City, the Memorial Day Parade and the commemoration of Veterans' Day. These improvements will further enhance the community and will also mean economic development.

Upon motion by Councilmember Coyle, duly seconded and passed, by a vote of 4/1, with Councilmember Abrams voting "nay", Ordinance No. 35-88, the full text of which can be found in Ordinance Book No. 14 of the Mayor and Council, to authorize public improvements for construction of sidewalks, road improvements and street lights

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on West Montgomery Avenue from 300 feet west of Washington Street to Nelson Street was adopted.

Re: Adoption of Ordinance to revise and amend Ordinance No. 17-88 appropriating funds and levying taxes for FY 1989.

Ordinance No. 36-88

Each fall, the Appropriations Ordinance is amended to reflect encumbrances of funds from the prior fiscal year. Also included are funds for approved projects which could not be carried out due to circumstances beyond the control of the requesting department.

On motion of Councilmember Coyle, duly seconded and unanimously passed, Ordinance No. 36-88, the full text of which can be found in Ordinance Book No. 14 of the Mayor and Council, was adopted to revise and amend Ordinance No. 17-88 appropriating funds and levying taxes for FY 1989.

Re: Adoption of Ordinance to grant Street Closing and Abandonment Application SCA-54-88, Edward M. Crough and Sue B. Crough applicants.

Ordinance No. 37-88

The applicants own industrial property on both sides of an unimproved public alley right-of-way which runs through the entire block from N. Stonestreet Avenue to N. Horners Lane. The applicants are requesting abandonment of only that portion between their properties, which is about 15 feet long and contains 2,265 square feet of area, to use as a parking area. The Planning Commission and Planning Staff have recommended approval of this application subject to compliance with certain conditions to protect the City's right to enter the area for maintenance storm drain and storm water management facilities in the balance of the right-of-way.

Upon motion of Councilmember Abrams, duly seconded and unanimously passed,

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the Mayor and Council adopted Ordinance No. 37-88, the full text of which can be found in Ordinance Book No. 14 of the Mayor and Council to abandon a 15 foot alley right-of-way located between 409 and 411 N. Stonestreet Avenue.

Re: Adoption of Ordinance to grant Text  
Amendment Application T-89-88, Mayor  
and Council applicant.

Ordinance No. 38-88

This text amendment has been prepared and filed on behalf of the Mayor and Council to address concerns for oversized accessory buildings on residential lots. The current definition of "accessory use" contains a size limitation not to exceed 10 percent of the size of the lot on which it is located. In several instances, very large accessory buildings have been permitted by virtue of being located on oversized lots. This text amendment will change the size limitation to 10 percent of the minimum lot area for the zone in which the lot is located. The Planning Commission and Planning Staff have recommended approval of this application. Councilmember Hovsepien stated that she had problems with this ordinance because it only addresses visual problems that arise in the use of a neighbor's land and not other problems that might arise.

Upon motion of Councilmember Abrams, duly seconded and passed by a vote of 4/1, with Councilmember Hovsepien voting "nay", Ordinance No. 38-88, the full text of which can be found in Ordinance Book No. 14 of the Mayor and Council, to amend Section 1-103 of the Zoning Ordinance to modify the definition of "accessory use" so as to limit the size of a detached structure used as an accessory use to 10 percent of the minimum lot area for the zone in which it is located, was adopted.

Re: Adoption of Ordinance to grant  
zoning Map Amendment Application  
M-51-88, Alvin J. Steinberg  
applicant.

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Ordinance No. 39-88

This map amendment would provide zoning reclassification of a 28,659 square foot portion of a parcel located behind 1329 Rockville Pike from the R-E, Residential Estate Zone, to the C-2, General Commercial Zone. The subject property is a L shaped, 28,659 square foot portion of a parcel located behind the Tyson Wheeler Funeral Home and Sunshine Square Center along Rockville Pike. It is part of one of three parcels owned by the applicant, who seeks to have the subject portion of the property rezoned to the C-2 Zone so that he may use it with the balance of the land for future redevelopment for retail uses. The Planning Commission and Planning Staff have recommended approval of this application. Councilmember Coyle stated that he favors this ordinance because it encourages space for retail use on the Pike.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, Ordinance No. 39-88, the full text of which can be found in the Mayor and Council Ordinance Book No. 14, to grant zoning Map Amendment Application M-51-88, was adopted.

Re: FYI/Correspondence

RE: Goals Task Force. Councilmember Coyle asked if the Task Force would issue an interim report. Mayor Duncan stated that he has asked for their minutes to be distributed to the Mayor and Council.

RE: Maximum Expansion Limits. Councilmember Hovsepien noted that the County meeting on MEL would be held Monday at 9:30 a.m. on the seventh floor of the Council Office Building.

RE: City Space Study. Councilmember Robbins asked for the completion date of the study. The City Manager responded there would be interim reports issued when the department interviews were completed.

Re: New Business

RE: Discussion of Mr. Hottel's contract bid mentioned in Citizens' Forum.

City Manager Bruce Romer reported that in July, the City rejected all four bids received by the Purchasing Department on an advertised invitation to bid on the HVAC/R time and material contract. The decision to reject all bids was based on the fact that the current supplier of those services was not notified of the bid solicitation and, therefore, did not bid. Mr. Romer stated that it was his decision not to reverse the earlier decision of the Acting City Manager to reject the bids and that the City planned to re-bid the services contract and to significantly change the scope of the contract so that all those who bid on it will have a fair opportunity to compete. This was an administrative decision.

Councilmember Abrams suggested that staff and the City Attorney review the case to determine if there would be any prejudice in awarding the contract to the low bidder within the time constraints of the bid and stated that if the only basis for rejection of the bid was failure of notice to the current holder of the contract that he would be inclined to go with the low bid.

Councilmember Hovsepian stated that the City needed a new policy to cover a future situation, but in this case, Mr. Hottel had followed the procedures.

Mr. Hottel stated that the recommendation for the rejection of the bids presumes that the current bidder's bid would be the lowest and that the recommendations to restructure the bid would be impossible because it requests an hourly rate.

Mayor Duncan asked staff to return on November 28th with a memo detailing the ramifications of overturning the recommendation to reject the bids as well as details of how the contract would be rebid since the original bids had be opened and made public.

RE: Mayor Duncan announced that the Carnation Players had invited the Council to a performance at the Senior Center on November 16th at 1:00 p.m.

RE: Mayor Duncan announced that the Maryland Municipal League is planning

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to inaugurate a Sister Cities Program to improve relationships among the cities in Maryland and has asked that Rockville and Baltimore be the pilot for the program. The Council agreed that the suggestion has merit and the Mayor will discuss it with staff.

Re: Executive Session

On motion of Councilmember Coyle, duly seconded and unanimously passed, the Mayor and Council convened in Executive Session to discuss matters relating to property disposal and to confer with legal counsel in the City Manager's Conference Room, Rockville City Hall, Maryland Avenue and Vinson Street, Rockville, Maryland at 10:45 p.m.

Re: Adjournment

There being no further business to come before the Mayor and Council in Executive Session, the meeting was adjourned at 11:55 p.m. to convene again in Public Hearing on November 21, 1988 or at the call of the Mayor.